IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 11929 of 2007(T)

PETITIONER:

VIJAYAN, RESIDING AT THONGALVILAME KARA,
PUTHEN VEEDU, NELLIMOODU, THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:

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1. THE RETURNING OFFICER,
NELLIMOODU SERVICE CO-OP. BANK LTD.NO.2639,
NELLIMOODU, NEYYATTINKARA, THIRUVANANTHAPURAM
(UNIT INSPECTOR, NEYYATTINKARA, OFFICE OF THE
ASSISTANT REGISTRAR (GENERAL), NEYYATTINKARA).

2. NELLIMOODU SERVICE CO-OP. BANK LTD.
NO.2639, NELLIMOODU, NEYYATTINKARA,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

3. G.BABU, TARA KUMARAVILA,
NELLIMOODU, NEYYATTINKARA, THIRUVANANTHAPURAM

4. M.R.VIJAYADAS, PETNAVILASAM,
NELLIMOODU, NEYYATTINKARA, THIRUVANANTHAPURAM.

5. M.PONNAYYAN, KOTTAKUZHI VEEDU,
NELLIMOODU, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.D.SOMASUNDARAM
ADV. SMT. A.G.ANEETHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 11929/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF G.O.(Rt.) No. 642/2005/CO-OP. DATED 11/11/2005 ISSUED BY THE CO-OPERATION (C) DEPARTMENT.

EXT.P2 COPY OF THE OBJECTION THE PETITIONER GAVE TO THE 1ST RESPONDENT DATED 03/04/2007.

RESPONDENT'S EXHIBITS

EXT.R3(a) COPY OF THE JUDGMENT IN WP(C) 34725/2004-H DATED 06/12/2004 OF THIS HON'BLE COURT.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 11929 of 2007 T

Dated, this the 9th day of April, 2007

J U D G M E N T

Heard the learned counsel for the petitioner, learned Government Pleader for the 1st respondent and the learned counsel appearing for respondents 2 to 5.

2. The allegation in the petition is that the 1st respondent has not considered disqualification of respondents 3 to 5 to contest for the election based on Ext.P1 order in appeal issued by Government against order under Sec. 68 of the Co-operative Societies Act, whereby surcharge is levied on respondents 3 to 5. Ext.P1 disqualification applies to other members also. The learned Government Pleader reported that 1st respondent was unaware of Ext.P1 and petitioner also did provide copy of it at the time of scrutiny of nominations. However, I find there was already judgment in W.P.(C)No. 34725/2004, whereunder this Court quashed notice proposing to disqualify the present committee members based on the original order, against which

appeal was pending at that time. In fact this Court allowed the WP(C) only because the order under Sec. 68 had not attained finality and the matter was pending in appeal. Therefore, obviously proceedings under Sec. 68 against respondents 3 to 5 and others were on record when nomination papers were scrutinised by 1st respondent. It was the duty of the 1st respondent while scrutiny of nominations to find out the result of appeal, particularly when it was referred in the earlier judgment. In the circumstance, I dispose of the WP(C) directing the 1st respondent to defer the election for the minimum period required and hold it at the earliest after verifying Ext.P1 and after deciding on the disqualification of respondents 3 to 5 and others involved, after hearing the petitioner and respondents 3 to 5 and any other person affected. Question of disqualification shall be considered in accordance with Rules after hearing all the parties prior to finalization of list of candidates. Election will be conducted at the earliest after finalization of eligibility as above.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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